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10
11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13

14 VALERIE SHIPPING INC.,	) Case No. CV 11 0911 JSW
)
15 Plaintiff,	) NOTICE OF APPLICATION AND
	) APPLICATION OF INTERVENING
16 vs.	) PLAINTIFF NORDEA BANK
	) FINLAND PLC, SINGAPORE
17 KOREA LINE SINGAPORE PTE, LTD.,	) BRANCH'S FOR LEAVE TO FILE A
	) SURREPLY
18 Defendant.	) AND ORDER THEREON
)
19 and	) Date: 22 July 2011
	) Time: 9:00
20	) Place: Courtroom 11, Judge White
21 NORDEA BANK FINLAND PLC,)
SINGAPORE BRANCH.)
)
22 Intervening Plaintiff.)
)

23
24 TO ALL PARTIES HERETO AND TO THEIR ATTORNEYS OF RECORD:

25 PLEASE TAKE NOTICE THAT Intervening Plaintiff, NORDEA BANK
26 FINLAND PLC, SINGAPORE BRANCH ("Nordea") will and hereby does apply for a
27 order for leave to file a Surreply to the Reply filed by Valerie Shipping Inc.'s ("Valerie")
28 in relation to Valerie's Motion for Apportionment of Future *Custodia Legis* Expenses

1 (“the Motion”). Nordea requests leave to file a Surreply as Valerie’s Reply raised new
 2 arguments that were not previously contained in Valerie’s moving papers. Nordea
 3 requests and hereby gives notice that this application be heard on July 22, 2011 at 9:00
 4 a.m. in Courtroom 11, 450 Golden Gate, San Francisco, California, concurrently with the
 5 pending Motion.

6 I.

7 **RELEVANT FACTS**

8 Valerie filed the Motion on May 24, 2011. Nordea filed its Opposition to the
 9 Motion on June 10, 2011. Valerie filed its Reply on June 17, 2011.

10 II.

11 **RELEVANT LAW**

12 Nordea respectfully seeks leave from this Court to file a Surreply in
 13 response to the Reply filed by Valerie. Generally, once a reply is filed, no additional
 14 memoranda, papers or letters may be filed without prior Court approval. However, the
 15 Court does retain discretion to entertain an application for leave to file a surreply.
 16 Indeed, where a reply advances new arguments, new facts, case law not cited in moving
 17 papers or where consideration of the surreply will aid the Court in disposing of the
 18 motion, the Court can grant leave to file a surreply: Landmark Screens, LLC v. Morgan,
 19 Lewis & Bockius LLP, 2010 U.S. Dist. LEXIS 95735 (N.D. Cal. Sept. 14, 2010) (“After
 20 considering Landmark’s motion, Defendants’ opposition thereto, and the proposed
 21 surreply, the Court concludes that Landmark’s motion to file a surreply is an
 22 appropriate response to arguments made by Defendants for the first time in their reply
 23 brief, and that consideration of the surreply will aid the Court in disposing of the
 24 pending motion... ”); see also Adlao v. JPMorgan Chase & Co., 2011 U.S. Dist. LEXIS
 25 30144 (N.D. Cal. Mar. 10, 2011) (“Because defendants inappropriately included their
 26 stay request for the first time in their reply, the Court granted both parties leave to file
 27 surreply briefs with respect to Defendants’ stay request.”); Poquez v. Suncor Holdings -
 28 COPII, LLC, 2011 U.S. Dist. LEXIS 57344 (N.D. Cal. May 26, 2011) ([B]ecause it was

1 raised for the first time in Defendants' Reply, the Court grants Plaintiff leave to file a
 2 surreply in response.); *Barco N.V. v. Tech. Props., Ltd.*, 2011 U.S. Dist. LEXIS 25030
 3 (N.D. Cal. Mar. 8, 2011) (Court granted motion for leave to file a surreply because of a
 4 finding of "good cause.") Accordingly, this Court retains discretion to entertain an
 5 application for leave to file a surreply.

6 III.

7 LEGAL ARGUMENT

8 Given that Valerie raises new arguments in its Reply, as are detailed
 9 below, Nordea respectfully requests that the Court grant its application for leave to file a
 10 surreply in accordance with the attached surreply at "Exhibit A".

11 Valerie advances two new arguments in its Reply. These are:

12 (a) Valerie's Reply advances a position that the crew member Plaintiffs in
 13 Intervention must contribute to a proportionate share of the *custodia legis* expenses
 14 incurred in this matter. This is an argument that was not advanced by Valerie in its
 15 moving papers, a fact which Valerie readily concedes in its Reply when it states "Valerie
 16 recommended that the crew member Plaintiffs in Intervention should not be required to
 17 contribute since it was believed that they did not have the funds." Nevertheless, and for
 18 the reasons set out in the attached surreply, it is clear that a surreply is necessary in
 19 order to allow Nordea an opportunity to address this new argument and, it is
 20 respectfully submitted, that such surreply will also aid the Court in disposing of the
 21 pending Motion as it is clear that Valerie's argument is misconceived; and

22 (b) Valerie's Reply extensively relies upon a decision of the United States
 23 District Court for the Central District of California in Nedlam, Inc. v. The Vessel
 24 Heritage, 2000 AMC 2003 (C.D. Cal. 2000), a decision that was not cited to in Valerie's
 25 moving papers. Again, and for the reasons set out in the attached surreply, it is clear
 26 that a surreply is necessary in order to allow Nordea to address the Nedlam case and, it
 27 is respectfully submitted, that such surreply will also aid the Court is disposing of the
 28

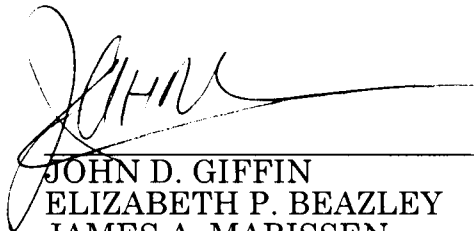
1 pending Motion as this decision is factually distinguishable and, in any event, irrelevant
 2 to the primary issue in dispute in the Motion.

3 IV.

4 CONCLUSION

5 For the reasons set out above, Nordea respectfully request that the
 6 Court grant its application for leave to file a surreply in accordance with the attached
 7 surreply at "Exhibit A".

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 11 DATED: June 30th, 2011


 12 JOHN D. GIFFIN
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 18 Nordea's motion for leave to file its surreply is GRANTED. Nordea shall efile the
 19 proposed surreply by July 15, 2011. Nordea is reminded of its obligation to
 20 electronically file proposed orders when it files a document seeking relief from the
 21 Court.

22 IT IS SO ORDERED, this 12th day of July 2011.

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